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JUN 21 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 21, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: Reply Comments, CC Docket No. 96-98

Dear Mr. Caton:

Enclosed for filing please find an original, and sixteen copies, of the Reply Comments of the Association of Telemessaging Services International (ATSI) in the proceedings, FCC 96-182, CC Docket No. 96-98.

ATSI respectfully requests that the Commission accept these late-filed reply comments in the above referenced proceedings.

As stated at the time of submitting the ATSI Comments, on April 1 of this year, the law firm that had served as legal counsel for ATSI over the past 14 years, and whose availability had been expected regarding these proceedings implementing Sections 251 and 252 of the Telecommunications Act of 1996, unexpectedly resigned.

ATSI has procured new representation and has begun deploying its resources in as expedient a manner as possible; nevertheless, the unexpected resignation of the law firm as counsel to ATSI has delayed the Association's ability to file its comments and reply comments to these proceedings in a timely fashion.

Sincerely,

Herta Tucker
Executive Vice President

cc: International Transcription Services, Inc. (1 copy)
2100 M Street, N.W., Suite 140

Janice Myles (1 copy plus diskette)
Common Carrier Bureau
1919 M Street, N.W., Room 544

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

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CC Docket No. 96-98

**REPLY COMMENTS OF
THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

**ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)**

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OUTLINE OF REPLY ARGUMENTS

- I. **The Access Needs of Small Enhanced Service Providers Are Unique and Require the Full Protection of the Act.**
- II. **Federal Guidelines Are Essential to the Creation of Pathways to Interconnection, Collocation and Unbundling Arrangements Envisioned by the Act.**
 - A. **Judicial Involvement Should Be Minimized.**
 - B. **Flexible Dispute Resolution Options and Safety-Valve Complaint Procedures Should Be Available at Every Step of the Negotiations Process.**
- III. **Federal Standards Must Create Cost Equities Between Incumbent LECs and ESPs.**
 - A. **Network Costs Should Be Imputed to Each Element on a Disaggregated Basis.**
- IV. **Small ESPs Require Access to a Seamless Network.**
- V. **Federal Guidelines Must Create a Level Playing Field for All Parties to the Negotiations Process with Outcomes That Include Interconnection, Collocation and Unbundling Arrangements That Reflect Actual Costs Disaggregated on a Service-by-Service Basis and Allow the Incumbent LEC to Receive a Reasonable Profit.**
 - A. **Collocation Arrangements Should Allow Points of Interconnection and Access to Network Elements at Costs and Quality Equal to Those Available Through Physical Collocation in the Central Office.**
 - B. **Access to the Network Should Be Limited Only by Technical Infeasibility and Harm to the Network.**
 - C. **Unbundling Must Be Made Available at the Smallest Possible Level at Costs Disaggregated on a Service-by-Service Basis.**

ATSI
CC Docket No. 96-98
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CC Docket No. 96-98

**REPLY COMMENTS OF
THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

The Association of Telemessaging Services International (ATSI) submits the following reply to comments filed in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-182, adopted and released April 19, 1996.

STATEMENT OF INTEREST

ATSI represents 640 telemessaging service bureaus that provide live telephone answering services and voice mail to over half of the 800,000 customers served by the telecommunications industry.

ATSI members have provided the American public with the latest telecommunications service

offerings for over 60 years and introduced voice messaging services to supplement its traditional live telephone answering services. Telemessaging service bureaus were the first enhanced service providers (ESPs) in the telecommunications field and today represent the only ESPs whose basic service involves, first and foremost, "people answering people". The industry serves business sectors that require phone call completion in service to the general public.

Telemessaging service bureaus require unimpeded and "seamless access" to the incumbent local exchange carrier's (LEC's) network elements. There are no technically feasible alternatives and no bypass options available to the industry, and the cost of accessing these network elements represent the second highest operating costs for telemessaging service bureaus. The industry cannot serve the public if required to construct its own network or rely on a patchwork of elements from different sources.

Network elements include basic service arrangements, functions and features, necessary for telemessaging service bureaus to provide telemessaging and other related services to their customers. Specifically, telemessaging service bureaus require access to such basic service functions (BSFs) as call forwarding, operator revert, personal receptionist service, dial tone, stutter dial tone, telephone listings, directory assistance, paging activation, and 2-way direct inward dialing (DID). The industry also requires access to such network capabilities as integrated

services digital network (ISDN), signal system 7 (SS7) and the advanced intelligent network (AIN). Telemessaging service providers require these network elements, and their functions and features, in order to assure their ability to provide satisfactory call completion and in order to deliver a seamless service to their customers.

Telemessaging service bureaus require effective and efficient pathways to the following outcomes:

1. Access to incumbent LEC network elements, and their basic service arrangements, functions and features, must be made available and remain unimpeded so that telemessaging service bureaus have every opportunity to offer desired telecommunications services at prices that are competitive and of quality that is acceptable in the marketplace.
2. The acceptability of points of interconnection, levels at which network elements are unbundled, and collocation arrangements must be determined in the final analysis in terms of whether or not telemessaging service bureaus are able to offer desired telecommunications services, particularly the same or similar competitive services as are offered by an incumbent LEC itself.

3. Competitive services offered by incumbent LECs and similar services offered by telemessaging service bureaus must share the same cost structure in terms of the network elements utilized (which include their basic service arrangements, functions and features) for each telecommunications service so that the cost component of each competitive service for a telemessaging service bureau and the incumbent LEC are essentially identical and the rates paid for the network elements by the telemessaging service bureau is no greater than the cost attributed to that element by the incumbent LEC.

SUMMARY

These replies do not represent an exhaustive response to each and every point that ATSI might take issue with. Given the Association's limited resources as the representative of small business service providers, ATSI has concentrated on the comments of the incumbent LECs and their arguments against the establishment of federal guidelines in the implementation of Sections 251 and 252 of the Telecommunications Act of 1996 (Act). It is paramount that the Commission recognize the need to construct new and additional pathways to efficiencies and pro-competitive opportunities that heretofore have not been available to ESPs in their efforts to provide services to the general public. Within the context of access to the incumbent LEC network and the

negotiations process available to parties seeking access, the pre-enactment environment is unacceptable. The Act clearly contemplates a new environment in which parties such as ESPs may request network access.

ATSI urges the Commission to develop federal guidelines that will create an efficient and effective pathway to the interconnection, collocation and unbundling arrangements required by the Act. The Commission itself should be guided by outcome-oriented goals, including the provision of means by which small ESPs may effectively negotiate arrangements necessary to provide the competitive services desired and thereby effectively compete in the marketplace.

Incumbent LECs¹ have filed comments arguing that federal guidelines are not necessary and that an unstructured negotiations process will easily lead to desired outcomes. ATSI firmly disagrees with this suggestion and would view the Commission's decision not to establish a structure of guidelines and presumptions for the achievement of competitive outcomes as a failure to implement the essential goals of Sections 251 and 252. Competitive outcomes are realized only when end-users are receiving the telecommunications services they want, at the prices they want, at the time they make the request, and with the quality they require.

¹ The incumbent LECs referred to are Ameritech, Bell Atlantic, Bell South, NYNEX and U.S. West.

The final order under these proceedings should therefore include guidelines and presumptions that eliminate points of dispute between negotiating parties and establish a process that is efficient with the time and resources of all parties involved, including state regulatory bodies and the Commission itself, and particularly small ESPs who are most vulnerable to costs associated with delay and denied access.

ARGUMENTS

I. The Access Needs of Small Enhanced Service Providers Are Unique and Require the Full Protection of the Act.

Small ESPs have access needs relating to interconnection, collocation and unbundling that differ from those of other telecommunications carriers, particularly large telecommunications exchange carriers.

ESPs require access to elements unbundled to the smallest level possible at costs disaggregated on a service-by-service basis, with a reasonable profit accruing to the network owner. In cases where an incumbent LEC offers competitive services of their own, the costs per element borne by ESPs in offering similar services must be no greater than those attributed to elements used by the

incumbent LEC. Federal guidelines must ensure access to network elements at terms and conditions that allow ESPs to offer competitive services in the marketplace through desired interconnection, collocation and unbundling arrangements. At any instance where an ESP is denied access to the network in a manner necessary to offer the competitive service desired, the incumbent LEC must demonstrate why the request for access has been denied, and this should be subject to dispute resolution options suggested below.

The comments filed by the incumbent LECs in these proceedings focus on their concerns with competition from new entrants as local and long distance service providers and fail to consider the needs of small ESPs to access network elements. Telemessaging service bureaus offer enhanced services demanded by the marketplace and enable the public to enjoy greater levels of call completion. Telemessagers enhance the incumbent LEC service; service bureaus are not competing against the incumbent LEC or others for market share as network owners or local or long distance exchange providers.

Reading these comments would lead one to believe that only two competing groups existed in the telecommunication's industry, the incumbent LEC and large telecommunications exchange carriers. ATSI urges the Commission not to overlook, as these comments do, the role of the ESPs in the marketplace and their access needs through points of interconnection, collocation

arrangements and unbundled elements. The battle between the telecommunications giants must not be allowed to destroy the pro-competitive opportunities the Act intends to create for small ESPs.

**II. Federal Guidelines Are Essential to the Creation of
Pathways to Interconnection, Collocation and
Unbundling Arrangements Envisioned by the Act.**

ATSI urges the Commission to establish standards and procedures for negotiations and arbitration between incumbent LECs and requesting telecommunications carriers. While state regulatory bodies assert the need for flexibility among the states in setting prices and reviewing arrangements, ATSI believes that the Commission can establish federal guidelines for negotiations procedures that will allow parties to arrive at agreements and enhance states' abilities to review access arrangements and arbitrate disputes. These guidelines will help all parties, including ESPs, achieve a pro-competitive environment that serves the best interests of the end-user and telecommunications consumer.

Pro-competitive means that the network owner no longer controls the outcome of negotiations or determines the services that will be brought to the marketplace by service providers. A pro-competitive environment allows service providers to respond to demands and needs of the marketplace in a cost-effective and timely manner.

Specifically, federal guidelines and presumptions will advance the negotiations process by eliminating unnecessary points of controversy and will provide assurances for small ESPs that desired outcomes will be achievable within the parameters of feasibility, network integrity and the opportunity for reasonable profit for the network owner.

Bell South asserts that "if the Commission insists on imposing detailed, uniform national standards at this time, the ironic effect will be that the Commission will have undermined the primary goal of the Act -- the speedy implementation of local exchange and exchange access competition pursuant to negotiated interconnection agreements." See Bell South Comments, p.3. Notwithstanding the counter-intuitive point that guidelines in general cannot be implemented to achieve expedited procedures, the incumbent LECs suggest that reliance on practices and procedures already in place will be satisfactory, inviting the Commission and new entrants into the same world of smoke and mirrors that small ESPs like telemessaging service bureaus have been facing for years. This is particularly true in the case of pricing requested access arrangements. Arguments in favor of

leaving negotiation procedures as roughly defined by the Act fail to recognize the needs of small ESPs or the historic experience of delay and denial from incumbent LECs when seeking access to network basic service functions.

As an example, Bell Atlantic's voice mail offering, "Answer Call", offers a feature that allows an incoming caller to activate the Bell Atlantic subscriber's pager, yet Bell Atlantic refuses to offer access to the basic service functions that would allow telemessaging service bureaus to offer the same pager activation service for their subscribers through Answer Call. If Bell Atlantic's voice mail system can allow callers to activate Bell Atlantic pagers, why is a telemessaging service denied the ability to do the same with their own competing pagers? In both cases the local loop is used to provide a dial tone and in both cases the basic service function should be available to forward the incoming call to a beeper, or alternatively to a "personal receptionist service". Within the negotiations process, telemessaging service bureaus have been denied this capability without any recourse to an expedited complaint procedure or dispute resolution procedure that would induce the incumbent LEC to provide the service or require the incumbent LEC to demonstrate why the request has been denied.

Bell South argues that "if the Commission attempts to codify presumptions that satisfy statutory standards, it creates further areas of dispute." See Bell South Comments, p.4. ATSI disagrees

with this assessment of presumptions (or guidelines) that are constructed to advance the statutory goals of the Act. In fact, presumptions and guidelines that are consistent with the Act should help avoid points of dispute that will otherwise arise in an inappropriately structured process. Small ESPs have operated in this latter type of environment for years prior to the passage of the Act in attempts to access the incumbent LEC network. Passage and implementation of the Act would be rendered meaningless for small ESPs if the Commission fails to construct an efficient environment for negotiations.

The Act does not anticipate maintaining the status quo for parties negotiating interconnection, collocation and unbundling arrangements. While ATSI agrees that parties should have the opportunity to negotiate arrangements for interconnection, collocation and unbundling, these negotiations must have certain parameters in place to guide the process. This is particularly important for small ESPs who have traditionally entered into these “negotiations” without any assurances of timeliness and outcome. Pathways to meaningful outcomes must be established.

A. Judicial Involvement Should Be Minimized.

In support of its argument against the employment of federal guidelines and presumptions in the negotiating process, Bell South suggests that Section 251 and 252 negotiations will result in a

contractual relationship between parties that can be enforced “like any other contract.” See Bell South Comments, p. 9. ATSI strongly disagrees with the sole reliance on judicial enforcement of contracts to address disputes arising out of negotiated arrangements. Within the context of negotiations, time is always on the side of the incumbent LEC, and protracted negotiations have been used in the past as effective tools to discourage small ESPs from seeking access to needed network elements.

Courts have neither the expertise to address the technical issues that will arise nor the ability to resolve them in a timely fashion. Where disputes do lead to judicial review, however, federal guidelines will help courts focus on actual duty and breach issues and avoid prolonged pleadings involving statutory interpretation and telecommunications policy best left to the Commission and the states. Regulatory agencies and the judiciary have historically developed guidelines and presumptions in order to define real issues and expedite dispute resolution. It seems somewhat disingenuous to suggest that these cannot be constructed in such a way as to create efficient and effective pathways to arrangements mandated by the Act.

ATSI recognizes that existing pathways to remedies do exist, including the opportunities to file complaints with the Commission’s Common Carrier Bureau and with state regulatory bodies. Nevertheless, the Act cannot be interpreted to deny the construction of more efficient and

effective pathways. In fact, federal guidelines should allow parties to resolve disputes without significant reliance on regulatory or judicial intervention. It is in this vein that small ESPs require the expanded scope of protection offered by the Act in offering enhanced services in the marketplace.

B. Flexible Dispute Resolution Options and Safety-Valve
Complaint Procedures Should Be Available at Every
Step of the Negotiations Process.

Federal guidelines must encourage and allow parties to utilize alternative dispute resolution procedures at any point in the negotiations process. ATSI suggests a flexible negotiations process that is based on the goal of achieving timely agreements for interconnection, collocation and unbundling, or any other area involving access needs to the network. In all cases of disputes between incumbent LECs and ESPs, guidelines should encourage parties to fully utilize alternative dispute resolution, and standards of good faith negotiations should include a willingness to undertake these alternative mechanisms.

ATSI urges the Commission to provide an expedited complaint procedure that will allow parties to present problems to the states at any time during the negotiations process without submitting

to full-blown arbitration proceedings. These could be modeled on the specific provisions of Section 260 which guarantees expedited consideration of complaints filed with the Commission within a 120-day time period. The combination of access to alternative dispute resolution and safety-valve complaint procedures will complement the Act's goal of allowing parties to negotiate pro-competitive arrangements for accessing the incumbent LEC network and offering enhanced telecommunications services to the general public.

Federal guidelines should also include participation of recognized trade association organizations where their involvement would be appropriate and would serve the public interest by reducing multiple negotiations involving the same issues, or issues that continue to arise, in a single forum or in more than one forum. ATSI is the only small business trade association on the Information Industry Liaison Committee (IILC) and has been instrumental in the development and deployment of the latest telecommunications technology. Telemessaging service bureaus see a similar role for trade associations to assist states and the Commission in resolving recurring disputes between negotiating parties.

III. Federal Standards Must Create Cost Equities Between Incumbent LECs and ESPs.

Several commentators assert that the Commission must allow rates of interconnection and unbundling that will permit incumbent LECs to recover their full costs of providing interconnection and unbundled network elements as well as a reasonable profit. See US West Comments, p. 26.

US West suggests that the interconnector should pay “all costs associated with the particular type of unbundling requested, plus costs represented by lost efficiencies incurred in offering the service/element on an unbundled basis.” US West, p. v and p. 39. ATSI strongly objects to the argument that “lost efficiencies” or engineering costs should be recovered in the cost basis of an individual element. This would have a highly anti-competitive impact on the ability of ESPs to access network elements.

ATSI urges the Commission to hold suspect the argument that “all costs” must be paid for by the requesting party. This sleight of hand would allow incumbent LECs to recover disproportionately high revenues if costs for services were not disaggregated. Certainly all costs for all services should be recoverable, but costs should be imputed on a disaggregated basis to each basic service

function available in the network. "All costs for all services" must be realized only with a methodology that separates costs on a service-by-service basis. Certain services must not have attributed to them disproportionately high costs while other services have attributed to them disproportionately low costs, even though the total for all costs recovered equals "all costs for all services". As argued elsewhere in this reply, ATSI agrees that incumbent LECs should be able to recover costs appropriate to basic service functions, but the actual methodology of cost recovery must achieve a cost equivalency between what the incumbent LEC charges the ESP to utilize a single feature and what it charges itself by way of offering (competitive or noncompetitive) services to its subscribers.

As an example, an incumbent LEC will offer a voice mail service that utilizes call forwarding and stutter dial tone. The price of subscriber offerings must reflect, among other costs, the cost imputed to the individual basic service functions involved, call forwarding and stutter dial tone. When telemessaging bureaus have requested stutter dial tone for use with their own service offerings, the incumbent LEC would price the BSF (offer the BSF to the requesting ESP) at essentially the same price it offered the entire voice mail service to its subscribers. In this case, the cost imputed to stutter dial tone as part of the voice mail offering does not achieve the required cost equivalency with the cost imputed to the stutter dial tone when offered to the ESP.

ATSI agrees, however, that the incumbent LEC should be able to recover appropriate costs plus a reasonable profit. In the case of unbundling, costs should be disaggregated on a service-by-service basis so that all appropriate costs are imputed to individual network elements, whether utilized for competitive or noncompetitive services. In the case of collocation, costs for virtual arrangements should be no greater than the costs for collocating in the central office, yet the actual costs for virtual collocation may be less than the physical arrangement requested.

A. Network Costs Should Be Imputed to Each Element on a Disaggregated Basis.

Two key conditions must be satisfied under any cost methodology developed.

First, the costs associated with individual network elements must be allocated on a disaggregated basis. In order to “sunshine” the cost basis used by incumbent LECs to offer services to requesting telecommunications carriers, each basic service function must reflect all actual costs attributable to it.

Secondly, the same cost mechanism used to attribute costs to competitive services offered by the incumbent LEC must be used to attribute costs when offering access to its network to other parties. The incumbent LEC must use the same costs when pricing its network basic service functions to requesting telecommunications carriers as it does when pricing services that it offers in the marketplace. Furthermore, no distinction should be made between competitive and noncompetitive services when attributing costs to each service.

The cost issue cuts both ways. Just as the incumbent LEC argues that its inability to fully recover costs places it at a competitive disadvantage if the requesting telecommunications carrier is able to utilize a network element or package of elements at a cost basis below that of the incumbent LEC, requesting ESPs are at a competitive disadvantage when the incumbent LEC, in offering competitive services in the marketplace, is able to utilize a network element or package of elements at a cost basis below that of the ESP. See US West Comments, p.26.

IV. Small ESPs Require Access to a Seamless Network.

As stated above, ESPs have interests that do not fit within the competitive paradigm applicable to incumbent LECs and new entrants in the local and long distance markets. ESPs do not seek to replicate any portion of the incumbent LEC network, or any other telecommunications network,

and should not be expected to do so; instead, ESPs seek access to the network in order to offer competitive services to their customers utilizing the same basic service functions that are available to the incumbent LEC.

In this vein, ESPs must have access to the incumbent LEC network, notwithstanding the availability of certain basic service functions available elsewhere. ATSI strongly disagrees with the arguments advanced by the incumbent LECs that the availability of alternative network elements should relieve them of the duty to provide access to their networks for specific elements through interconnection and collocation. Just as ESPs cannot be expected to create their own networks, ESPs have neither the resources nor infrastructure to create a patchwork of elements, selected from unrelated networks of incumbent LECs and other network owners. In order to offer the enhanced services demanded by the marketplace, ESPs require a seamless package of basic service functions that can only be realized by access to the incumbent LEC network.

Bell South even suggests that “the presence of alternative sources of these services underscores the lack of need for Commission rules, since it ensures that the failure of a LEC to provide the capability would not impair the ability of the requesting carrier to provide the service it seeks to offer.” See Bell South Comments, pp. 45 and 46. ATSI urges the Commission to reject this argument.

The same line of reasoning might have been advanced during the debate in Congress over passage of the Act; nevertheless, Congress correctly saw the need to provide access to the incumbent LEC's network in such a way that ESPs might utilize individual elements or a package of elements.

U.S. West goes as far to state that "applying the network element unbundling rules to any service of an incumbent LEC where a similar service is available from others or could be economically duplicated would be potentially anti-competitive". See US West Comments, p.42. Again, this simply is not applicable to the needs of small ESPs and must be rejected by the Commission.

The only barriers to the incumbent LEC network should be the technical infeasibility of the request or harm to the network. Contrary to the incumbent LEC argument, the availability of basic service functions elsewhere creates a presumption that the same functions are also available from the incumbent LEC itself.

V. **Federal Guidelines Must Create a Level Playing Field
for All Parties to the Negotiations Process with
Outcomes That Include Interconnection, Collocation
and Unbundling Arrangements That Reflect Actual
Costs Disaggregated on a Service-by-Service Basis and
Allow the Incumbent LEC to Receive a Reasonable
Profit.**

ATSI urges the Commission to develop federal guidelines that measure “just, fair and nondiscriminatory” based on the ability of an ESP to offer competitive services with the terms and conditions available under a given interconnection arrangement made available by the incumbent LEC. Notwithstanding elaborate discussions of cost methodologies and pricing theories, ESPs will be able to compete only if costs allow them to offer services to customers at competitive prices. Any other standard would fall short of the goal of the Act to create outcomes where ESPs may bring competitive services to the market.

A. Collocation Arrangements Should Allow Points of Interconnection and Access to Network Elements at Costs and Quality Equal to Those Available Through Physical Collocation in the Central Office.

Contrary to the comments of the incumbent LECs, the Commission should establish federal guidelines for collocation arrangements. The essential guidelines, whether collocation arrangements be defined as physical or virtual, must focus on access and costs.

Specifically, federal guidelines relating to collocation should incorporate the following:

1. Physical collocation is preferable over virtual collocation and the incumbent LEC must demonstrate that a particular collocation request is either not technically feasible or threatens to harm the premises where collocation would take place.
2. Virtual collocation must be offered at a cost no greater than the cost of providing physical collocation and the incumbent LEC must justify all costs that exceed this amount.